C.M.P.No.24627 of 2025
in
Rev.Appl.SR.No.56653 of 2023

DR. G.JAYACHANDRAN,J.
and
MUMMINENI SUDHEER KUMAR,J.

ORDER

[Order of the Court was made by Dr.G.JAYACHANDRAN., J.]

A road accident occurred on 20.06.2008 involving a Wagan R car bearing Registration No.TN 07 AA 4579 and the Swaraj Mazda, goods van bearing Registration No.TN 21 AX 4384. In the said accident, four persons sustained injuries. Two succumbed to injuries and two survived the injuries.

2. The dependents of the deceased and the injured victims filed claim petitions in the respective M.C.O.P.Nos.262, 263 264 of 2009, 328 of 2010 & 4628 of 2012 and all the petitions were disposed of by a common award on 04.05.2017 passed by the Tribunal.

3. As against the award passed in M.C.O.P.No.4268 of 2012 filed by Amirthalakshmi and her minor daughter Ashmitha Arvind, the New India Assurance Company, arrayed as 1st respondent, preferred C.M.A.No.4016 of 2019 before this Court. The Hon'ble Division Bench of this Court vide order dated 15.12.2021 partly allowed the appeal by modifying and reducing the award amount from Rs.2,27,99,000/- to Rs.1,46,65,000/-. Further, the Division Bench apportioned the liability between the appellant, the insurance company of the Swaraj Mazda van namely New India Assurance Company and HDFC General Insurance company of the Wagan R car in the ratio 75% : 25%.

4. The HDFC General Insurance Company has now preferred a Review Application stating that it was not a party either in the M.C.O.P.No.4268 of 2012 or in the appeal arising out of award passed in the said O.P., which was decided by the Division Bench of this Court in C.M.A.No.4062 of 2019. In spite of this, the Division Bench apportioned the compensation in the ratio of 75% : 25% , thereby directing HDFC General Insurance company to pay 25% of the compensation amount. The review petitioner submits that such apportionment was made without impleading them as a party and without affording an opportunity to contest the claim against them. Therefore, the finding on liability is to be reconsidered and reviewed.

5. The Review Application has been filed with a delay of 387 days, in support of the petition for condonation of delay, the review petitioner states that they came to know about the apportionment of liability and their obligation to pay 25% of the award amount only when the execution petition was filed.

6. In the petition to condone the delay as well as in the review petition, both the claimant and the New India Assurance Company have filed their respective counter.

7. The sum and substance of the counter is that the four claim petitions in connection with the accident occurred on 20.06.2008, involving two vehicles were tried together. Though in M.C.O.P.Nos.4268 of 2012 and M.C.O.P.No.328 of 2010, HDFC General Insurance company, who is the review petitioner herein, was not arrayed as a respondent, in the other two connected claim petitions, they were shown as the respondent. It is contended that the review petitioner participated in the joint trial of all the four cases and was fully aware of the common award dated 04.05.2017 passed by the Tribunal, wherein, the Tribunal itself had apportioned 25% liability on the review petitioner. Therefore, it is submitted that the petition seeking review of the order is not maintainable and the delay in filing the review application also is not supported by sufficient reasons.

8. Heard the learned counsels and perused the records.

9. In the light of the application to review filed along with the condone delay petition and the detailed counter filed by the respondents as well as the reading of the common award passed by the Tribunal in the batch of claim petitions, it is very obvious that the review petitioner had participated in the proceedings, though they were not arrayed as respondents in the two claim petitions namely M.C.O.P.Nos.328 of 2010 & 4268 of 2012.

10. The respondents allege that, having enough knowledge about the order passed against review petitioner in M.C.O.P.Nos.4268 of 2012, wherein 25% of the compensation amount was apportioned to them.

Suppressing the said fact, the present application has been filed for review and the reason stated for condonation of delay also far from the truth.

11. This Court finds force in the submissions made by the learned counsel for the respondents. However, the fact that stares on the face of the record is that the award fixing 25% liability on HDFC General Insurance company in a claim petition where they were not arrayed as a party requires serious consideration. Knowledge of the award is one thing; fastening liability on a person who had knowledge about the award without impleading them as a party, is entirely a different aspect.

12. The basic principle of law is that “no person shall be condemned unheard” and “no liability can be fastened on any party without affording them an opportunity of being heard”. In the claim petition in M.C.O.P.No.4268 of 2012 and C.M.A.No.4016 of 2019 liability has been fastened on the review petitioner. In all fairness, the review petitioner ought to have been given an opportunity to defend the claim made in the connected claim petitions. His participation in the concern claim petitions will not be sufficient to say he should suffered the decree in the claim petition, in which he was not arrayed as a party.

13. As far as the M.C.O.P.Nos.4268 of 2012 and 328 of 2010, which had been preferred by the dependents of the tort-feaster, the position stands on a different footing. As far as the review petitioner is concerned, he should have been afforded an opportunity to put forth his defence. Had he been impleaded as a respondent, he would have done so. When the claimants had consciously omitted to implead him as a respondent, they cannot have the advantage of the award passed behind the back against the review petitioner without affording him an opportunity to defend the case.

14. For the said reasons, the delay in filing the review application is hereby condoned.

[Dr.G.J., J.] & [M.S.K., J.]
19.11.2025

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Note: The Registry is directed to number the review application, if it is otherwise in order.

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